



California Fair Political Practices Commission

January 14, 1986

Roger Grable
Rutan & Tucker
P.O. Box 1950
Costa Mesa, CA 92628-1950

Re: Your Request for Advice
Our File No. A-85-203 ~ /

Dear Mr. Grable:

Thank you for your letter requesting advice on behalf of Irvine City Councilmember Barbara R. Wiener, concerning her duties under the conflict of interest provisions of the Political Reform Act.^{1/} This advice is based on the facts provided in your letters and in the letter from Mrs. Wiener's husband, Alan Wiener.

FACTS

Mrs. Wiener is a member of the Irvine City Council. Her husband is a 5-percent general partner in a partnership which owns property in the Irvine Business Complex, a planned area in the City of Irvine. Her husband's ownership interest in the partnership is valued at more than \$15,000. The partnership's real property consists of approximately 3.77 acres on which a 77,000 square foot commercial building has been constructed. Currently, two tenants occupy all of the space in the building. The value of the property is \$3,500,000, and the gross revenue the partnership receives from the rental of the building is \$22,000 per month.

The Irvine City Council is considering various changes in the zoning of the Irvine Business Complex (IBC). The IBC consists of 2,500 acres located in the City of Irvine, in and around the John Wayne Airport, which are subject to a

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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comprehensive zoning regulation. There are essentially four land use categories established by this regulation: the medium intensity mixed use zone consisting of 633 acres; the high intensity mixed use zone consisting of 1,783 acres; the industrial zone consisting of 125 acres; and the residential zone consisting of 8 acres.

The intensity of development in these zones is limited in order to ensure that adequate traffic capacity will be available to accommodate development. Within the mixed use zones, development intensity is limited by providing that development up to a certain floor area ratio, depending on the type of use, is permitted as a matter of right. Development beyond those limits up to a maximum intensity limit can only be obtained through the issuance of conditional use permits. There is a ceiling on the total number of development points which can be obtained for development by means of conditional use permits within the IBC. The real property owned by the partnership is in the medium intensity mixed use zone and has a floor area ratio (F.A.R.) of 0.47 ($77,000 \div 164,221.2$). The maximum intensity limit for development for the partnership's property, including that obtainable through the conditional use permit process, is 0.5. Therefore, an additional 0.03 F.A.R. would be available to the partnership's property through a conditional use permit.

The existing circumstance is that all of the development capacity in the IBC (15,000,000 square feet) has been applied for and approved or reserved for corporate headquarters use and there is no additional development intensity available. A priority waiting list has been established by the City for those who have applied for development rights after exhaustion of the current limit. More than 18,000,000 square feet of additional development is represented on the waiting list. Only approximately 70,000 square feet of the waiting list involves the medium intensity mixed use zone. The balance of the waiting list relates to the high intensity mixed use zone.

In your letter you describe the decisions pending before the City Council as follows:

(a) Corporate Headquarters Expansion Points.

As a part of the original Irvine Business Complex Zone Change which established the intensity limits, an exception was granted for existing corporate headquarters users who had master planned expansion facilities. The City Council granted them an additional amount of points for corporate expansion as

a matter of right so as to accommodate their expansion needs. This development intensity was deducted from the overall intensity increases permitted within the complex. The issue that has arisen is due to the assertion on the part of some of the corporate users that they have an absolute right to convert and utilize that corporate expansion development for mixed uses which would otherwise be permitted in the zone in which they are located. The City Council has disagreed with this interpretation but is currently considering several alternatives to accommodate the interests of these corporate headquarters users. The property in which Mrs. Wiener has a financial interest does not qualify as a corporate headquarters site and, therefore, would not be affected by most of these proposals. The one scenario where there may be a financial effect is the potential that under one of the new alternatives there may be a prospect for the loss of corporate headquarters points which would then be returned to the overall development pool which then might be available for other properties within the Irvine Business Complex....

(b) Addition of Additional Intensity Limits.

Also under consideration by the Council is a traffic study which is designed to determine whether or not additional traffic capacity might be generated within the Irvine Business Complex through traffic improvements which were not contemplated as part of the initial study. If additional capacity is identified, additional points may be made available for development within the complex....

(c) Transfer of Development Rights.

The City Council will also be considering whether or not some transfer of development right proposal ought to be initiated within the complex so as to afford those properties which are underdeveloped an opportunity to transfer those development rights to other properties on some fair market basis.... All of the current proposals concerning a transfer of development rights deal with the issue of a transfer of points below the base line limit, not points which could have been applied for by use permit. It is possible that a system might be presented to the Council which would provide for a transfer of potential development rights in which event the 0.03

F.A.R. still available to the Wiener's property interest may be subject to transfer.

(d) Reservation of Points for U.C.I. Expansion.

Another of the issues to be considered by the City Council is whether or not some points ought to be reserved from any IBC entitlement to accommodate development which may occur on the University of California at Irvine Campus which may not be subject to the jurisdiction of the City of Irvine. The purpose of this proposal would be to consider the traffic impacts or accommodate those traffic impacts as a part of the IBC intensity analysis.

(e) Development of Hotels, Retail and Restaurant Developments.

The current provisions of the IBC permit the development of hotels, retail and restaurant developments up to a certain limit without regard to the impact on the overall intensity limits as these are favored uses whose traffic impacts are different than the other types of uses which are permitted with the zones in question. Hotels, restaurants and retail uses are permitted within the mixed use zone and any change in the regulations would determine whether or not the property in question could be converted or redeveloped for any of these uses.

(f) Prepayment of IBC Fees.

Another of the issues being considered is whether or not the Irvine Business Complex fees ought to be made payable earlier in the process so as to discourage speculative proposals....

(g) Loss of Development Points.

Another issue which will be considered by the Council is in what manner development points may be relinquished by properties which fail to develop under their authorized conditional use permits or which fail to develop to the maximum intensity which would otherwise be available to them. The current City policy is that if a conditional use expires or if a project is developed to less than the maximum intensity permitted through a conditional use permit that the unused points are lost and returned to the

pool and reallocated to those on the priority list. The Wiener's property currently has no entitlement to the 0.03 F.A.R. and, therefore, would not be subject to any loss of points until such time as they obtain additional development rights through a conditional use permit. Any increased availability of points would be to their advantage.

QUESTION

May Mrs. Wiener participate in decisions concerning the IBC zoning?

CONCLUSION

Mrs. Wiener may participate in decisions concerning the IBC zoning unless it is reasonably foreseeable that a decision would either increase or decrease the value of the partnership's real property by \$10,000 or more, or affect the income-producing potential of the property so as to increase or decrease the gross revenues of the partnership by \$10,000 or more in a fiscal year, as discussed below.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using her official position to influence a governmental decision in which she knows or has reason to know she has a financial interest. A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the public official or a member of her immediate family, or on, among other interests, any business entity in which the official has a direct or indirect investment worth \$1,000 or more. Section 87103.

Mrs. Wiener's husband has a 5-percent investment interest, worth more than \$1,000 dollars, as a general partner in a partnership which owns real property in the IBC. Mrs. Wiener's investment interests include her husband's investments. Section 82034. Therefore, Mrs. Wiener must disqualify herself from participating in decisions which would have a reasonably foreseeable material financial effect, distinguishable from the

effect on the public generally, on the partnership in which her husband is a 5-percent general partner.^{2/}

The Commission has adopted regulation 2 Cal. Adm. Code Section 18702.2, which sets forth guidelines for determining whether the foreseeable effect of a decision on a business entity will be considered material. According to the information provided to us, the standards contained in 2 Cal. Adm. Code Section 18702.2(g) are the appropriate materiality standards to apply to the partnership in which Mrs. Wiener has an investment. The real property is an asset of the partnership; accordingly, an increase or decrease of \$10,000 or more in the fair market value of the partnership's real property would be considered material. 2 Cal. Adm. Code Section 18702.2(g)(3). Decisions affecting the partnership's real property may also affect the income-producing potential of the property, thereby affecting the gross revenues of the partnership. An increase or decrease of \$10,000 in the partnership's gross revenues for a fiscal year would be considered material. 2 Cal. Adm. Code Section 18702.2(g)(1).

Before we apply the materiality test to the seven pending decisions, it is necessary to consider whether the decisions concerning the IBC zoning will affect Mrs. Wiener's financial interests in a manner distinguishable from the effect on the public generally. Commission regulation 2 Cal. Adm. Code Section 18703 provides that a material financial effect of a governmental decision on an official's interests is distinguishable from its effect on the public generally unless the decision will affect the official's interest in the same manner as it will affect all members of the public or a significant segment of the public. You have informed us that there are approximately 600 parcels in the IBC, most of which are under separate ownership. Ordinarily, 600 persons would not constitute the public generally in a city the size of Irvine. In the Owen Opinion, 2 FPCC Ops. 77 (No. 76-005, June 2, 1976), the Commission held that commercial property owners in the downtown commercial area of the City of Davis were not a significant segment of the public. Based on the

^{2/} If Mrs. Wiener or her husband had a 10 percent or greater investment interest in the partnership, real property interests of the partnership would be considered real property interests of Mrs. Wiener. Section 82033. In that case it would be necessary to determine whether any decisions pending before the Irvine City Council would have a reasonably foreseeable material financial effect on the real property, rather than on the partnership. Section 87103(b).

Commission's reasoning in the Owen Opinion, we conclude that property owners in the IBC are not a significant segment of the public. Furthermore, it appears that the various decisions will have differing effects on the 600 parcels in the IBC depending on the current zoning and use of the parcels and depending on whether the properties have already received approval for additional development or are on the waiting list for additional development. Here, as discussed in the Legan Opinion, 9 FPPC Ops. 1 at 14, (No. 85-001, August 20, 1985), the "public generally" exception does not apply when the segment of the public affected by a decision would not be affected in "substantially the same manner."

We shall now attempt to analyze the effect of each particular decision on the partnership in which Mrs. Wiener has a financial interest.

(1) Corporate Headquarters Expansion Points.

This decision concerns the right of corporate headquarters users to convert their allotted development points to mixed uses, such as office, research and development, hotel and retail uses. The decision does not directly affect the partnership's property because that property is not corporate headquarters property. However, Mrs. Wiener's financial interests would be affected to the extent that the decision could increase the use of corporate headquarters property or other IBC property for uses which would compete with the partnership for tenants or otherwise affect the income-producing potential or fair market value of the partnership's property. Therefore, Mrs. Wiener should consider whether any of the proposals concerning corporate headquarters expansion points would have a substantial likelihood of affecting the income-producing potential by \$10,000 or more in a fiscal year or the fair market value of the partnership's property by \$10,000 or more.

(2) Addition of Additional Intensity Limits.

The City Council has ordered a traffic study in order to determine whether traffic improvements could permit increased traffic capacity in the IBC, and thus make additional points available for development within the complex. If additional capacity is identified, it could be allocated to any of the properties within the IBC. There is currently a waiting list in excess of 15 million square feet of development, and this waiting list would be used to allocate any additional development points that become available. The partnership is

not on this waiting list, and currently has no plans for additional development. You stated in your letter that the City of Irvine staff has informed you that it is exceedingly unlikely that a significant amount of additional development will be made available as a result of the traffic study.

Under the facts presented, the partnership's property will not receive additional development points as a result of this decision. Therefore, the only possible effects on the partnership as a result of the potential increase in development points would be effects on the fair market value or income-producing potential of the partnership's property resulting from the approval of development which would compete with the partnership for tenants or in some other way affect the value of the partnership's property. If, as predicted by the City staff, only a small amount of additional development becomes available due to the traffic study, it is unlikely that the partnership would experience a material financial effect as a result of the City Council's decision to permit additional development capacity. Therefore, unless there are facts which indicate that a significant amount of additional development will be permitted as a result of the traffic study, Mrs. Wiener may participate in decisions of the City Council on this issue.

(3) Transfer of Development Rights.

All of the current proposals concerning transfer of development rights deal with the transfer of unused development points below the base line limit. The partnership's property is developed in excess of the base line limit of 0.25 F.A.R., and therefore the current proposals would not permit the partnership to transfer its unused 0.03 development points. Accordingly, the current proposals would not affect the partnership except to the extent that additional development could occur which competes with the partnership for tenants or otherwise affects the value of the partnership's property. Again, Mrs. Wiener may participate in these decisions unless she determines that there is a substantial likelihood that the additional development would affect the fair market value of the partnership's property by \$10,000 or more, or the gross revenues of the partnership by \$10,000 or more in a fiscal year.

(4) Reservation of Points for U.C.I. Expansion.

This proposal concerns whether to limit development entitlements within the IBC to accommodate traffic generated by development which may occur outside the IBC, on property owned by the University of California at Irvine. Currently, this

proposal would require points which become available when conditional use permits expire to be reserved for University expansion. If this proposal would result in the partnership losing all entitlement to the unused 0.03 F.A.R., and the loss of those development points would affect the fair market value of the partnership's property by \$10,000 or more, then Mrs. Wiener is required to disqualify herself from participating in decisions on this proposal.

(5) Development of Hotels, Retail and Restaurant Developments.

This proposal concerns whether to change the current zoning for the IBC mixed use zones, which now permits development of hotels, retail and restaurant developments up to a certain limit without regard to the impact on the overall intensity limits. Any change in the current zoning could affect whether the partnership's property could be converted or redeveloped for hotel, retail or restaurant use. We think that a proposal which could change the permitted use of the partnership's property is likely to have a material financial effect on the fair market value of that property. Accordingly, Mrs. Wiener should disqualify herself from participating in these decisions.

(6) Prepayment of IBC Fees.

This proposal concerns whether the IBC fees should be made payable earlier in the process. Although the proposal would primarily affect properties which currently have unused development entitlement or which are on the existing waiting list, the proposal would apply to all property within the IBC. Therefore, if the partnership or a future purchaser of the partnership's property were to decide to increase the development of, or redevelop, that property, payment of IBC development fees could be required at an earlier time in the development process. We think the prepayment of IBC development fees, which the City staff says are substantial (Memorandum to City Council from Community Development Director dated August 20, 1985, at p. 11), could have a significant impact on the use of the partnership's property, and thus on the fair market value of that property. Furthermore, the prepayment of IBC fees could have a significant impact on the development of properties for uses which would compete with the partnership's use of its property, thereby affecting the value of the partnership's property. Accordingly, Mrs. Wiener should disqualify herself from participating in the decisions concerning prepayment of development fees.

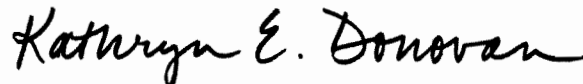
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(7) Loss of Development Points.

This proposal concerns the reallocation of development points upon the expiration of a conditional use permit. Currently, the partnership's property has no right to the additional unused 0.03 F.A.R., which has been returned to the pool and, presumably, reallocated. Therefore, the partnership would not lose any development points under this proposal. Furthermore, it appears unlikely that the partnership could obtain additional development points, since all development capacity within the IBC has been allocated, and a waiting list exists for an amount of development which is greater than the total permitted in the IBC. However, if any proposal before the City Council would increase or decrease the availability of development points, then Mrs. Wiener should consider whether that proposal could increase or decrease the fair market value of the partnership's property by \$10,000 or more, or increase or decrease the income-producing potential of the partnership's property by \$10,000 or more in a fiscal year. If so, then Mrs. Wiener must disqualify herself from participating in the decisions.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh



California Fair Political Practices Commission

October 11, 1985

Alan H. Weiner
Kindel & Anderson
P.O. Box 8090
Newport Beach, CA 92660

Re: Your Request for advice on
Behalf of Barbara R. Weiner,
Irvine City Councilmember
Our File No. A-85-203

Dear Mr. Weiner:

We have received your request for written advice on behalf of your wife, Irvine City Councilmember Barbara R. Weiner. After reviewing your letter and the accompanying documents, it appears that the fundamental issue which your letter raises is much the same as that which was addressed in the Commission's most recent Opinion (Opinion requested by Thomas L. Legan, No. 85-001, August 20, 1985, 9 FPPC Opinions 1). I enclose a copy of that Opinion for your review.

As you will see, the central issue in the Legan Opinion was whether the current voluntary usage of the property, and the owner's assertions that such usage would continue, is to be considered when examining the reasonably foreseeable effects of a decision. The Commission ruled that it is not to be considered. (See, fn. 6 at 9 FPPC 7, and discussion at 9 FPPC 9-12.) Consequently, what must be examined in the instant case is the reasonably foreseeable effect of any of the pending decisions on the fair market value of your property. This is really a factual question. For instance, even though you and your partners have elected not to seek additional development rights, if such rights became "transferable from one property to another within the complex" as you have stated might occur, would this possibility affect the value of your property to a potential buyer? The same question needs to be asked regarding the "provision of additional traffic improvements" which you have also mentioned as one of the pending decisions of the City Council. Ultimately, a determination also must be made whether

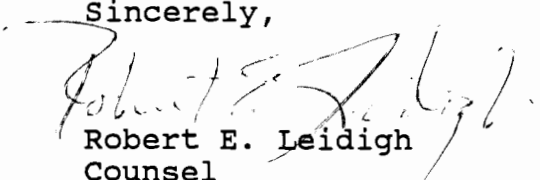
Alan H. Weiner
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any reasonably foreseeable financial effect upon your property would be distinguishable from the effect upon the public generally. See again the Legan Opinion and see the Owen Opinion, No. 76-005 (2 FPPC Opinions 77, June 2, 1976), copy enclosed.

I hope that these two Opinions are of assistance to you in considering these factors. Should you or Councilmember Weiner desire our further review, we stand ready to provide that assistance upon receipt of the factual information necessary to resolve the issues discussed above.

If you have any questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosures

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*A PROFESSIONAL CORPORATION

September 27, 1985

Ms. Diane Fishburn
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear Diane:

I am writing to obtain advice on possible conflict of interest matters as they relate to Barbara R. Wiener, a council member on the Irvine City Council. I am Barbara's husband. The factual background with respect to our areas of concern is as follows:

1. I am a general partner owning a five percent (5%) interest in a California general partnership which owns property in a planned area in the City of Irvine known as the Irvine Business Complex. Barbara Wiener has a community property interest in my partnership interest. To date I have contributed capital in the amount of \$15,000 to the partnership and assume that my interest therein has a value of more than \$15,000.
2. The real property owned by the general partnership consists of approximately 3.77 acres (164,221.2 square feet) on which a 77,000 square foot building has been constructed. Presently, two tenants, both unrelated to Barbara and myself, occupy all of the space in the building.
3. The Irvine Business Complex zoning is a comprehensive zoning regulation for 2,500 acres (including more than 600 separate parcels) located in the City of Irvine in and around the John Wayne Airport. There are essentially four land use categories established by this regulation: the medium intensity mixed use zone consisting of 633 acres; the high intensity mixed use zone consisting of 1,783 acres; the industrial zone consisting of 125 acres; and, the residential zone consisting of 8

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Ms. Diane Fishburn
September 27, 1985
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acres. The intensity of development in these zones is limited in order to ensure that adequate traffic capacity will be available to accommodate development. Within the mixed use zones, development intensity is limited by providing that development up to a certain floor area ratio, depending on the type of use, is permitted as a matter of right. Development beyond those limits up to a maximum intensity limit can only be obtained through the issuance of conditional use permits and depends upon the availability of development points which have not been utilized for other projects which have exceeded their unrestricted limit of development. The real property owned by the partnership is in the medium intensity mixed use zone and has a floor area ratio of .47 ($77,000 \div 164,221.2$). The maximum intensity limit for development, including that obtainable through the conditional use permit process, is .5. A copy of the Irvine Business Complex Zoning Ordinance is enclosed for your reference.

The existing circumstance is that all of the development capacity (15,000,00 square feet) has been applied for and approved or reserved for corporate headquarters use and there is no additional development intensity available. A priority waiting list has been established by the City for those who have applied for development rights after exhaustion of the current limit and more than 18,000,000 square feet of additional development is represented on the waiting list. Only approximately 70,000 square feet of the waiting list involves the medium intensity mixed use zone as properties in that area are generally not considered practical for redevelopment. The balance of the waiting list relates to the high intensity mixed use zone.

Among the issues that the Irvine City Council will be considering are (i) whether or not additional development capacity can be made available through a reanalysis of the traffic impacts within the complex or through the provisions of additional traffic improvements; (ii) whether or not and to what extent development rights may be transferable from one property to another within the complex; and (iii) whether or not development points which have been allocated to corporate headquarters users can be utilized for mixed use development thereby making it more likely that these points will be utilized and not subsequently available for other projects within the complex.

None of these proposed provisions addresses the site upon which the partnership property is located specifically but apply throughout the complex. The partnership property does not qualify as a corporate headquarters property. The partnership property is developed virtually to limits permitted by the

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existing zoning. The partnership property is not on the priority waiting list and no plans exist for the possibility of future development of the partnership property.

On the basis of the foregoing, would it be appropriate to characterize the impact of the types of decisions to be considered by the Irvine City Council, none of which specifically addresses the site on which the partnership property is located, as having no material financial effect on the partnership real property distinguishable from its effect on the public generally.

Please let me know if you need any additional information or documentation in order to complete your analysis. Thank you very much for your attention.

Very truly yours,

A handwritten signature in cursive script, reading "Alan H. Wiener".

Alan H. Wiener
of KINDEL & ANDERSON

AHW:cae

Enclosure

RUTAN & TUCKER

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IN REPLY PLEASE REFER TO

Mr. Robert E. Leidigh
Counsel
Legal Division
California Fair Political
Practices Commission
428 J Street
Suite 800
P.O. Box 807
Sacramento, CA. 95804-0807

Re: Request for Advice on Behalf of
Barbara R. Wiener, Irvine City Councilmember
FPPC File No. A-85-203

Dear Mr. Leidigh:

In accordance with our telephone conversation, I have reviewed the Opinion requested by Thomas L. Legan (9 FPPC Opinions 1) and by William L. Owen (2 FPPC Opinions 77) as well as your letter addressed to Alan H. Wiener dated October 11, 1985, with respect to the above-referenced matter. Based on the foregoing, I have attempted to develop additional information which will permit you to issue a written advice letter in accordance with the provisions of Government Code Section 83114. This information is in addition to the information submitted to you by Mr. Wiener together with his letter dated September 27, 1985.

Attached for your information are the following staff reports and exhibits which should provide you with a more complete description of the proposals currently pending before the City

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which may affect the Irvine Business Complex and the properties owned by Mrs. Wiener:

1. June 6, 1985, staff report from the Director of Community Development to the Planning Commission relating to the Conversion of Existing Corporate Headquarters Entitlements to Mixed Use Development.

2. June 6, 1985, staff report from the Director of Community Development to the Planning Commission relating to the Irvine Business Complex Zoning Amendment Zone Change Corporate Headquarters Provision.

3. July 30, 1985, staff report from the Director of Community Development to the Planning Commission relating to the Industrial League of Orange County Proposed Alternatives for the IBC Corporate Headquarters Provision.

4. August 20, 1985, staff report from the Director of Community Development to the City Council relating to the Consideration of Potential IBC Revisions as Directed by the City Council on March 18, 1985.

5. Statistical analysis of Mixed Use Zones within the City of Irvine.

6. Copy of the City of Irvine General Plan Land Use Map.

My analysis indicates that there are two fundamental issues which are presented: One, whether the decisions which will be pending before the City Council of the City of Irvine with regard to IBC will have an effect on Mrs. Wiener's interest in the real property in question distinguishable from the effect upon the general public; and Two, if that effect is distinguishable from the public in general is it reasonably foreseeable that any of the decisions that the Council will make will have a material financial effect on their financial interest?

The following information is offered to assist you in making this determination consistent with the opinions rendered in the Owen and Legan matters.

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1. Effect on the Public Generally.

As noted in the statistical analysis attached hereto, approximately 60% of the mixed use office, research and development property located within the City of Irvine is within the Irvine Business Complex. The Irvine Business Complex zoning is the only area within the City which is subject to the floor area ratio restrictions at the present time. These restrictions were adopted in order to accommodate additional development within the potential capacity of the immediately available transportation system. The Irvine Medical and Science Complex and the Irvine Industrial Complex East are all newer developments and their systems have been designed to meet the capacity as planned. The type of regulation that the Council is struggling with therefor is unique to the Irvine Business Complex. As Mr. Wiener indicates, there are approximately 600 separate parcels within the Irvine Business Complex. Most of these are under separate ownership, although some major corporations such as The Irvine Company, The Koll Company and Trammell-Crow own more than one parcel. Mrs. Wiener only has an interest in the single property identified in Mr. Wiener's letter. It if were necessary to identify with additional precision the number of separate ownerships within the Irvine Business Complex, it could be accomplished but it would be extremely time consuming and expensive to do this since an investigation of the Assessor's tax roll would be required. All of the issues now pending before the City Council would affect the Irvine Business Complex in general and not just the parcel in which Mrs. Wiener has a financial interest.

2. Material Economic Effect.

If you conclude that the impact of the decisions pending before the Council will have an effect on Mrs. Wiener's financial interest distinguishable from the general public, the next issue is whether or not it is reasonably foreseeable that that effect will be a material financial effect. In order to assist you in making this determination, I have broken down the issues and provided some additional information supplementing the staff reports which I have attached to this letter.

(a) Corporate Headquarters Expansion Points.

As a part of the original Irvine Business Complex Zone Change which established the intensity limits, an exception was granted for existing corporate headquarters users who had master planned expansion facilities. The City Council granted them an additional amount of points for corporate expansion as a matter of

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right so as to accommodate their expansion needs. This development intensity was deducted from the overall intensity increases permitted within the complex. The issue that has arisen is due to the assertion on the part of some of the corporate users that they have an absolute right to convert and utilize that corporate expansion development for mixed uses which would otherwise be permitted in the zone in which they are located. The City Council has disagreed with this interpretation but is currently considering several alternatives to accommodate the interests of these corporate headquarters users. The property in which Mrs. Wiener has a financial interest does not qualify as a corporate headquarters site and, therefore, would not be affected by most of these proposals. The one scenario where there may be a financial effect is the potential that under one of the new alternatives there may be a prospect for a loss of corporate headquarters points which would then be returned to the overall development pool which then might be available for other properties within the Irvine Business Complex. As indicated in Mr. Wiener's letter, all of the existing fifteen million square feet of additional development has been applied for and is committed to existing development projects. In addition, you should be aware that there is a waiting list containing at least another fifteen million square feet of development which has been established as a priority list in the event additional development becomes available through the forfeiture of any development rights by those which have already acquired them such as the corporate headquarters users and those which have obtained conditional use permits for the original fifteen million square feet. Mrs. Wiener's property is not on either of these lists.

(b) Addition of Additional Intensity Limits.

Also under consideration by the Council is a traffic study which is designed to determine whether or not additional traffic capacity might be generated within the Irvine Business Complex through traffic improvements which were not contemplated as part of the initial study. If additional capacity is identified, additional points may be made available for development within the complex. As noted above, there is already a waiting list of in excess of fifteen million square feet of development which has been established on a priority basis waiting in line for this development should it become available. My information from the City of Irvine staff is that it is exceedingly unlikely that a significant amount of additional development will be made available through this analysis.

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(c) Transfer of Development Rights.

The City Council will also be considering whether or not some transfer of development right proposal ought to be initiated within the complex so as to afford those properties which are underdeveloped an opportunity to transfer those development rights to other properties on some fair market basis. As noted in Mr. Wiener's letter, the property in which they have a financial interest is already developed in excess of the base line limit of .25 F.A.R. and they could only obtain additional development rights through an application of a conditional use permit. All of the current proposals concerning a transfer of development rights deal with the issue of a transfer of points below the base line limit, not points which could have been applied for by use permit. It is possible that a system might be presented to the Council which would provide for a transfer of potential development rights in which event the .03 F.A.R. still available to the Wiener's property interest may be subject to transfer.

(d) Reservation of Points for U.C.I. Expansion.

Another of the issues to be considered by the City Council is whether or not some points ought to be reserved from any I.B.C. entitlement to accommodate development which may occur on the University of California at Irvine Campus which may not be subject to the jurisdiction of the City of Irvine. The purpose of this proposal would be to consider the traffic impacts or accommodate those traffic impacts as a part of the I.B.C. intensity analysis. The effect of such an allocation would obviously limit the likelihood that those on the waiting list for additional points and those who have not yet applied for additional points such as the property in which the Wiener's have a financial interest will obtain any additional development rights.

(e) Development of Hotels, Retail and Restaurant Developments.

The current provisions of the I.B.C. permit the development of hotels, retail and restaurant developments up to a certain limit without regard to the impact on the overall intensity limits as these are favored uses whose traffic impacts are different than the other types of uses which are permitted within the zones in question. Hotels, restaurants and retail uses are permitted within the mixed use zone and any change in the regulations would determine whether or not the property in question could be converted or redeveloped for any of these uses.

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(f) Prepayment of I.B.C. Fees.

Another of the issues being considered is whether or not the Irvine Business Complex fees ought to be made payable earlier in the process so as to discourage speculative proposals. As noted above, the impact of such a proposal would primarily effect those properties which currently have I.B.C. entitlement or which are on the existing waiting list.

(g) Loss of Development Points.

Another issue which will be considered by the Council is in what manner development points may be relinquished by properties which fail to develop under their authorized conditional use permits or which fail to develop to the maximum intensity which would otherwise be available to them. The current City policy is that if a conditional use expires or if a project is developed to less than the maximum intensity permitted through a conditional use permit that the unused points are lost and returned to the pool and reallocated to those on the priority list. The Wiener's property currently has no entitlement to the .03 F.A.R. and, therefore, would not be subject to any loss of points until such time as they obtain additional development rights through a conditional use permit. Any increased availability of points would be to their advantage.

As indicated in Mr. Wiener's letter, the property in which they have a financial interest is currently developed to .47 F.A.R. which is .03 F.A.R. below the maximum intensity limit. The building is a relatively new building although it was constructed prior to the implementation of the intensity limits of the I.B.C. zone. Consideration should be given to whether or not it would be economically feasible to apply for a conditional use permit for that additional intensity which is not now available to it. Similarly, consideration should be given to the likelihood that any development would become available to the Wiener's property as a result of any of these proposals in view of the fact that all of the existing fifteen million square feet of development have been allocated to existing projects and the current waiting list is in excess of an additional fifteen million square feet. I believe that these factors go to the issue of foreseeability.

I trust that the foregoing will provide you with sufficient information in order to render an advisory opinion on this issue

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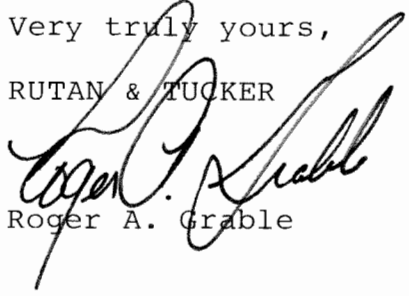
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for Mrs. Wiener. If you require any additional information, you may contact the undersigned or Mr. Jay Tashiro of the City of Irvine Planning staff. Mr. Tashiro is the planner with principal responsibility for the Irvine Business Complex and he can be reached at (714) 660-3795.

Thank you for your assistance.

Very truly yours,

RUTAN & TUCKER


Roger A. Grable

RAG:fcl
cc: Mrs. Barbara Wiener
Encs:(6)



California Fair Political Practices Commission

December 20, 1985

Roger A. Grable
Rutan & Tucker
P.O. Box 1950
Costa Mesa, CA 92628-1950

Re: Request for Advice on Behalf
of Barbara Wiener,
Our File No. A-85-203

Dear Mr. Grable:

As I informed you in our recent telephone conversation, I have been drafting the advice letter concerning Councilmember Barbara Wiener's duties under the conflict of interest provisions of the Political Reform Act. When we spoke, I did not realize that I would require additional facts in order to provide the advice. The information I require is:

1. The current value of the real property owned by the partnership in which Mr. Wiener is a general partner.
2. The monthly gross income the partnership receives from the rental of the property.
3. Whether the partnership's sole business activity is the ownership and management of real property, or whether the partnership is involved in business activities unrelated to the ownership and management of real property.
4. Whether the partnership is a business entity qualified for public sale under Corporations Code Section 25110.

Shortly after I receive this additional information, I expect to be able to finalize the advice letter. I realize that these decisions will soon be considered by the Irvine City Council, and I apologize for the delay in providing advice. I appreciate your assistance on this complex question.

Very truly yours,

Kathryn E. Donovan

Kathryn E. Donovan
Counsel
Legal Division

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Sacramento, CA. 95804-0807

Re: Request for Advice on Behalf of Barbara Wiener
FPPC File No. A-85-203

Dear Ms. Donovan:

This letter will confirm my telephone conversation with you of December 30th wherein I responded to the questions which you posed in your letter dated December 20, 1985. These responses are as follows:

1. The current value of the real property owned by the partnership in which Mr. Wiener is a general partner is \$3,500,000.00.
2. The monthly gross income the partnership receives from the rental of the property is \$22,000.00.
3. The partnership's sole business activity is the ownership and management of the real property in question. The partnership is not involved in business activities unrelated to the ownership and management of the real property.
4. The partnership is not a business entity qualified for public sale under Corporations Code Section 25110.

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Ms. Kathryn E. Donovan
December 31, 1985
Page Two.

I trust that the foregoing information is all that will be necessary in order to complete your evaluation and issue your advice letter with regard to this matter. If you have any further questions, please do not hesitate to call me.

Very truly yours,

RUTAN & TUCKER


Roger A. Grable

RAG:fcl
cc: Mrs. Barbara Wiener

